



**Laban v Mbogori; Kirimi (Interested Party) (Environment and Land
Appeal 9 of 2017) [2022] KEELC 3551 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 9 OF 2017**

**CK NZILI, J
MAY 4, 2022**

BETWEEN

PAULINE MUTHONI LABAN APPELLANT

AND

MOSES KIRIMI MBOGORI RESPONDENT

AND

TABITHA GACHERI KIRIMI INTERESTED PARTY

RULING

1. By an application dated April 4, 2022 the court is asked to order substitution of the respondent herein with the proposed interested party. The application is supported by an affidavit sworn by Pauline Muthoni Laban on the even date. The reasons given are that this appeal was filed in April 2018 but the respondent passed on before it could be concluded. That the respondent herein filed an application on July 29, 2019 but remained unprosecuted for lack of a grant but eventually a citation was filed in Meru MC Misc Succession Application No 82 of 2019 to compel the proposed interested party to take out letters of administration; there is a stay order by court of parties and that the appeal has been admitted for hearing. The sworn affidavit repeats the above grounds save to state that the application dated July 29, 2019 was dismissed by the court.
2. The applicant has attached a copy of the citation and the grant *ad litem* as annexures marked PM “1” and PML “2” respectively. On February 15, 2022, the court dismissed the application dated July 29, 2019 for non- prosecution. The date had been taken by the appellant who never appeared before the court to argue and prosecute the application yet it was in her interest to fast track their appeal.
3. In the said application the affidavit had been sworn by the same person as in the instant application. There has been no application for the review of the orders made on February 15, 2022 and any reasons



given for non-attendance and non-prosecution of the said application. The appellant cannot eat her cake and at the same time have it.

4. There has been inordinate delay of one and half months since the dismissal. This coupled with the delay of over three years in prosecuting the application given the letter ad litem were issued on October 24, 2018 shows the appellant is misleading the court by alleging the delay was occasioned by lack of letter of administration *ad litem*.
5. The memorandum of appeal was filed on April 5, 2018 after which the respondent passed on October 1, 2018. The letters of administration *ad litem* were issued on October 24, 2018 to pursue this appeal among other cases. This was hardly a month after the death of the respondent and less than six months after the appeal was filed. It took the appellant over ten months to file the application dated 29.7.2019 and close to over three years to prosecute it.
6. This court therefore finds no merits in the instant application more so when a similar one was dismissed for non-prosecution as alluded above.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 4TH DAY OF MAY, 2022

In presence of:

Appellant

HON. C.K. NZILI

ELC JUDGE

